



भारत का राजपत्र The Gazette of India

असाधारण

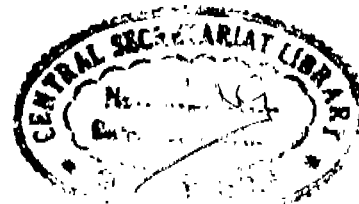
EXTRAORDINARY

भाग II—खण्ड 2

PART II—Section 2

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY



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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following Bill was introduced in Lok Sabha on 27th February, 1996 :—

BILL NO. 5 OF 1996

A Bill to provide for the establishment of the Telecom Regulatory Authority of India to regulate the telecommunication services, and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Forty-seventh Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Telecom Regulatory Authority of India Act, 1996.

(2) It extends to the whole of India.

(3) It shall be deemed to have come into force on the 27th day of January, 1996.

2. (1) In this Act, unless the context otherwise requires,—

(a) "appointed day" means the date on which the Authority is established under sub-section (1) of section 3;

(b) "Authority" means the Telecom Regulatory Authority of India established under sub-section (1) of section 3;

(c) "Chairperson" means the Chairperson of the Authority appointed under sub-section (3) of section 3;

(d) "Fund" means the Fund constituted under sub-section (1) of section 22;

(e) "member" means a member of the Authority appointed under sub-section (3) of section 3 and includes the Chairperson and the Vice-Chairperson;

(f) "notification" means a notification published in the Official Gazette;

(g) "prescribed" means prescribed by rules made under this Act;

(h) "regulations" means the regulations made by the Authority under this Act;

(i) "telecommunication service" means service of any description (including electronic mail, voice mail, data services, audio tex services, video tex services, radio

Short title,
extent and
commence-
ment.

Definitions.

ping and cellular mobile telephone services) which is made available to users by means of any transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature, by wire, radio, visual or other electro-magnetic means.

(2) Words and expressions used and not defined in this Act but defined in the Indian Telegraph Act, 1885 or the Indian Wireless Telegraphy Act, 1933, shall have the meanings respectively assigned to them in those Acts.

13 of 1885.
17 of 1933.

(3) Any reference in this Act to a law which is not in force in the State of Jammu and Kashmir shall in relation to that State be construed as a reference to the corresponding law, if any, in that State.

CHAPTER II

TELECOM REGULATORY AUTHORITY OF INDIA

Establishment
and incorpora-
tion of
Authority.

3. (1) With effect from such date as the Central Government may, by notification, appoint, there shall be established, for the purposes of this Act, an Authority to be called the Telecom Regulatory Authority of India.

(2) The Authority shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall, by the said name, sue or be sued.

(3) The Authority shall consist of a Chairperson, and not less than two, but not exceeding four members, to be appointed by the Central Government.

(4) The head office of the Authority shall be at New Delhi,

Qualifications
for appoint-
ment of
Chairperson
and other
members

4. (1) The Chairperson shall be a person who is or has been a Judge of the Supreme Court or who is or has been the Chief Justice of a High Court.

(2) A member shall be a person who has held the post of Secretary or Additional Secretary, or the posts of Additional Secretary and Secretary to the Government of India or any equivalent post in the Central Government or the State Government for a period of three years.

Term of office,
conditions of
service, etc., of
Chairperson
and other
members.

5. (1) Before appointing any person as the Chairperson or member, the Central Government shall satisfy itself that the person does not have any such financial or other interest as is likely to affect prejudicially his functions as such member.

(2) The Chairperson shall hold office for a term of five years from the date on which he enters upon his office.

(3) A member shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of sixty-two years, whichever is earlier.

(4) The employee of the Government on his selection as member shall have to retire from service before joining as a member.

(5) The salary, allowances and other conditions of service of the Chairperson shall be,—

(a) if he has been a Judge of the Supreme Court, the same as that of a Judge of the Supreme Court;

(b) if he has been the Chief Justice of a High Court, the same as that of the Chief Justice of the High Court:

Provided that in the case of an appointment of a person as a Chairperson who has retired as a Judge of the Supreme Court or Chief Justice of a High Court and who is in receipt of or has received or has become entitled to receive any retirement benefits by way of pension, gratuity or other forms of retirement benefits, the pay of such person shall be reduced by the gross amount of pension and pension equivalent of gratuity or any other form of retirement benefits, if any, drawn or to be drawn by him.

(6) The salary and allowances payable and other conditions of service of the members shall be such as may be prescribed.

(7) The salary, allowances and other conditions of service of the Chairperson of the member shall not be varied to his disadvantage after appointment.

(8) Notwithstanding anything contained in sub-section (2) or sub-section (3), a member may—

(a) relinquish his office by giving in writing to the Central Government notice of not less than three months; or

(b) be removed from his office in accordance with the provisions of section 7.

(9) The Chairperson or any other member ceasing to hold office as such, shall—

(a) be ineligible for further employment either under the Central Government or under the State Government; or

(b) not hold any appointment in any private company in telecom sector in relation to which any matter has been the subject-matter of consideration before the Authority.

6. (1) The Chairperson shall have powers of general superintendence and directions in the conduct of the affairs of the Authority and he shall, in addition to presiding over the meetings of the Authority, exercise and discharge such powers and functions of the Authority and shall discharge such other powers and functions as may be prescribed.

Powers of
Chairperson
and Vice-
Chairperson.

(2) The Central Government may appoint one of the members to be a Vice-Chairperson of the Authority who shall exercise and discharge such powers and functions of the Chairperson as may be prescribed or as may be delegated to him by the Authority.

7. (1) The Central Government may remove from office any member, who—

(a) has been adjudged as insolvent; or

(b) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or

(c) has become physically or mentally incapable of acting as a member; or

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a member; or

(e) has so abused his position as to render his continuance in office prejudicial to the public interest.

Removal of
members from
office in
certain
circumstances.

(2) Notwithstanding anything contained in sub-section (1), no member shall be removed from his office on the ground specified in clause (d) or clause (e) of that sub-section unless the Supreme Court on a reference being made to it in this behalf by the Central Government, has, on an inquiry, held by it in accordance with such procedure as it may specify in this behalf, reported that the member ought, on such ground or grounds, to be removed.

8. (1) The Authority shall meet at such times and places, and shall observe such rules of procedure in regard to the transaction of business at its meetings (including quorum at such meetings) as may be provided by regulations.

Meetings.

(2) The Chairperson or, if for any reason, he is unable to attend a meeting of the Authority, the Vice-Chairperson and in his absence, any other member chosen by the members present from amongst themselves at the meeting shall preside at the meeting.

(3) All questions which come up before any meeting of the Authority shall be decided by a majority vote of the members present and voting, and in the event of an equality of votes, the Chairperson or in his absence, the person presiding, shall have a second or casting vote.

(4) The Authority may make regulations for the transaction of business at its meetings.

Vacancies,
etc., not to
invalidate
proceedings of
Authority.

9. No act or proceeding of the Authority shall be invalid merely by reason of—

(a) any vacancy in, or any defect in the constitution of, the Authority; or

(b) any defect in the appointment of a person acting as a member of the Authority;

or

(c) any irregularity in the procedure of the Authority not affecting the merits of the case.

Officers and
other
employees of
Authority.

10. (1) The Authority may appoint officers and such other employees as it considers necessary for the efficient discharge of its functions under this Act.

(2) The salary and allowances payable to, and the other conditions of service of, the officers and other employees of the Authority appointed under sub-section (1) shall be such as may be determined by regulations.

CHAPTER III

POWERS AND FUNCTIONS OF AUTHORITY

Functions of
Authority.

11. (1) Notwithstanding anything contained in the Indian Telegraph Act, 1885, the functions of the Authority shall be to— 13 of 1885.

(a) ensure technical compatibility and effective inter-relationship between different service providers;

(b) regulate arrangement amongst service providers of sharing their revenue derived from providing telecommunication services;

(c) ensure compliance of licence conditions by all service providers;

(d) lay down and ensure the time period for providing local and long distance circuits of telecommunication between different service providers;

(e) facilitate competition and promote efficiency in the operation of telecommunication services so as to facilitate growth in such services;

(f) protect the interest of the consumers of telecommunication service;

(g) settle disputes between service providers;

(h) render advice to the Central Government in the matters relating to the development of telecommunication technology and any other matter relatable to telecommunication industry in general;

(i) levy fees at such rates and in respect of such services as may be determined by regulations;

(j) ensure effective compliance of universal service obligations;

(k) perform such other functions, including such administrative and financial functions, as may be entrusted to it by the Government or as may be necessary to carry out the provisions of this Act.

(2) Notwithstanding anything contained in the Indian Telegraph Act, 1885, the Authority may, from time to time, by order, notify the rates at which the telecommunication services within India and outside India shall be provided under this Act including the rates at which messages shall be transmitted to any country outside India. 13 of 1885.

(3) While discharging its functions under sub-section (1), the Authority shall not act against the interest of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality.

(4) The Authority shall ensure transparency while exercising its powers and discharging its functions.

12. (1) Where the Authority considers it expedient so to do, it may, by order in writing,—

(a) call upon any service provider at any time to furnish in writing such information or explanation relating to its affairs as the Authority may require; or

(b) appoint one or more persons to make an inquiry in relation to the affairs of any service provider; and

(c) direct any of its officers or employees to inspect the books of account or other documents of any service provider.

(2) Where any inquiry in relation to the affairs of a service provider has been undertaken under sub-section (1),—

(a) every director, manager, secretary or other officer, if such service provider is a company; or

(b) every partner, manager, secretary or other officer, if such service provider is a firm; or

(c) every other person or body of persons who has had dealings in the course of business with any of the persons mentioned in clauses (a) and (b),

shall be bound to produce before the Authority making the inquiry, all such books of account or other documents in his custody or power relating to, or having a bearing on the subject-matter of such inquiry and also to furnish to the Authority with any such statement or information relating thereto, as the case may be, required of him, within such time as may be specified.

(3) Every service provider shall maintain such books of account or other documents as may be prescribed.

(4) The Authority shall have the power to issue such directions to service providers as it may consider necessary, for proper functioning by service providers.

13. The Authority may, for the discharge of its functions under sub-section (1) of section 11, issue such directions from time to time to the service providers, as it may consider necessary.

Power of Authority to call for information, conduct investigations, etc.

Power of Authority to issue directions.

CHAPTER IV

SETTLEMENT OF DISPUTES

14. (1) If a dispute arises, in respect of matters referred to in sub-section (2), among service providers or between service providers and a group of consumers, such disputes shall be adjudicated by a bench constituted by the Chairperson and such bench shall consist of two members:

Authority to settle disputes.

Provided that if the members of the bench differ on any point or points they shall state the point or points on which they differ and refer the same to a third member for hearing on such point or points and such point or points shall be decided according to the opinion of that member.

(2) The bench constituted under sub-section (1) shall exercise, on and from the appointed day all such jurisdiction, powers and authority as were exercisable immediately before that day by any civil court on any matter relating to—

(i) technical compatibility and inter-connections between service providers;

(ii) revenue sharing arrangements between different service providers;

(iii) quality of telecommunication service and interest of consumers:

Provided that nothing in this sub-section shall apply in respect of matters relating to—

(a) the monopolistic trade practice, restrictive trade practice and unfair trade practice which are subject to the jurisdiction of the Monopolies and Restrictive Trade Practices Commission established under sub-section (1) of section 5 of the Monopolies and Restrictive Trade Practices Act, 1969;

54 of 1969.

(b) the complaint of an individual consumer maintainable before a Consumer Disputes Redressal Forum or a Consumer Disputes Redressal Commission or a National Consumer Redressal Commission established under section 9 of the Consumer Protection Act, 1986;

68 of 1986.

(c) dispute between telegraph authority and any other person referred to in sub-section (1) of section 7B of the Indian Telegraph Act, 1885.

13 of 1885.

Filing of application to Authority and procedure for passing order by it.

15. (1) An aggrieved person may make an application in respect of matters referred to in sub-section (2) of section 14 within such period as may be prescribed.

Explanation.—For the purposes of this sub-section, the expression “aggrieved person” means—

(i) any service provider who has a dispute in respect of matters referred to in clauses (i) and (ii) of sub-section (2) of section 14;

(ii) where any loss or damage is caused to a group of consumers, any member representing such group of consumers.

(2) On receipt of an application made under sub-section (1), the Authority may, after giving the parties an opportunity of being heard, pass such orders as it thinks fit.

(3) While arriving at a decision, the Authority shall record in writing the reasons for such decision.

(4) Every decision of the Authority shall be published in the annual report of the Authority.

(5) The orders and directions of the Authority shall be binding on the service providers, Government and all other persons concerned.

Procedure and powers of Authority.

16. (1) The Authority shall be guided by the principles of natural justice.

(2) The Authority shall have, for the purpose of discharging their functions under this Chapter, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 in respect of the following matters, namely:—

5 of 1908.

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) issuing commissions for the examination of witnesses or documents;

(e) reviewing its decisions;

(f) dismissing an application for default or deciding it *ex parte*;

(g) setting aside any order of dismissal of any application for default or any order passed by it *ex parte*;

(h) any other matter which may be prescribed.

(3) Every proceeding before the Authority shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196 of the Indian Penal Code and the Authority shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

45 of 1860.

2 of 1974.

17. The applicant may either appear in person or authorise one or more legal practitioners or any of its officers to present his or its case before the Authority.

Right to legal representation.

18. Any person aggrieved by any decision or order of the Authority may file an appeal to the High Court within thirty days from the date of communication of the decision or order of the Authority to him:

Appeal to High Court.

Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

19. Every order made by the Authority under this Act or the order made by the High Court in any appeal against any order of the Authority shall, on a certificate issued by any officer of the Authority or the Registrar of the High Court, as the case may be, be deemed to be a decree of the civil court and shall be executable in the same manner as a decree of that court.

Orders passed by Authority or High Court to be executable as a decree.

20. If any person wilfully fails to comply with the orders of the Authority or any order of the High Court, as the case may be, he shall be punishable with imprisonment for a term which may extend to two years, or fine, or with both.

Penalty for wilful failure to comply with orders of Authority or of High Court.

CHAPTER V

FINANCE, ACCOUNTS AND AUDIT

21. The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the Authority grants of such sums of money as that Government may think fit for being utilised for the purposes of this Act.

Grants by the Central Government.

22. (1) There shall be constituted a fund to be called the Telecom Regulatory Authority of India General Fund and there shall be credited thereto—

Fund.

(a) all grants, fees and charges received by the Authority under this Act; and

(b) all sums received by the Authority from such other sources as may be decided upon by the Central Government.

(2) The Fund shall be applied for meeting—

(a) the salaries, allowances and other remuneration of the members, officers and other employees of the Authority;

(b) the expenses of the Authority in the discharge of its functions under this Act; and

(c) the expenses on objects and for purposes authorised by this Act.

23. (1) The Authority shall maintain proper accounts and other relevant records and prepare an Annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

Accounts and audit.

(2) The accounts of the Authority shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Authority to the Comptroller and Auditor-General of India.

(3) The Comptroller and Auditor-General of India and any other person appointed by him in connection with the audit of the accounts of the Authority shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General of India generally has, in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Authority.

(4) The accounts of the Authority as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report

thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament.

Furnishing of
returns, etc., to
Central
Government.

24. (1) The Authority shall furnish to the Central Government at such time and in such form and manner as may be prescribed or as the Central Government may direct, such returns and statements and such particulars in regard to any proposed or existing programme for the promotion and development of the telecommunication services, as the Central Government may, from time to time, require.

(2) The Authority shall prepare once every year in such form and at such time as may be prescribed, an annual report giving a summary of its activities during the previous year and copies of the report shall be forwarded to the Central Government.

(3) A copy of the report received under sub-section (2) shall be laid, as soon as may be after it is received, before each House of Parliament.

CHAPTER VI

MISCELLANEOUS

Power of
Central
Government to
issue direc-
tions.

25. (1) The Central Government may, from time to time, issue to the Authority such directions as it may think necessary in the interest of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality.

(2) Without prejudice to the foregoing provisions, the Authority shall, in exercise of its powers or the performance of its functions, be bound by such directions on questions of policy as the Central Government may give in writing to it from time to time:

Provided that the Authority shall, as far as practicable, be given an opportunity to express its views before any direction is given under this sub-section.

(3) The decision of the Central Government whether a question is one of policy or not shall be final.

Members,
officers and
employees of
Authority to be
public servants.

26. All members, officers and other employees of the Authority shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act to be public servants within the meaning of section 21 of the Indian Penal Code.

45 of 1860.

Bar of
jurisdiction.

27. No civil court shall have jurisdiction in respect of any matter which the Authority is empowered by or under this Act to determine.

Protection of
action taken in
good faith.

28. No suit, prosecution or other legal proceedings shall lie against the Central Government or the Authority or any officer of the Central Government or any member, officer or other employees of the Authority for anything which is in good faith done or intended to be done under this Act or the rules or regulations made thereunder.

Penalty for
contravention
of directions of
Authority.

29. If any person violates directions of the Authority such person shall be punished in the case of first offence with imprisonment for a term which may extend to two years or with fine which may extend to one lakh rupees or with both and in case of a second or subsequent offence, with imprisonment for a term which may extend to two years or with fine which may extend to two lakh rupees for each day of default.

Offences by
companies.

30. (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.

27 of 1957.
43 of 1961.

31. Notwithstanding anything contained in the Wealth-tax Act, 1957, the Income-tax Act, 1961, or any other enactment for the time being in force relating to tax on wealth, income, profits or gains, the Authority shall not be liable to pay wealth-tax, income-tax or any other tax in respect of their wealth, income, profits or gains derived.

Exemption from tax on wealth and income.

32. The Authority may, by general or special order in writing, delegate to any member, officer of the Authority or any other person subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Act (except the power to settle dispute under Chapter IV and to make regulations under section 35) as it may deem necessary.

Delegation.

33. (1) No court shall take cognizance of any offence punishable under this Act or the rules or regulations made thereunder, save on a complaint made by the Authority.

Cognizance of offences.

(2) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

34. (1) The Central Government may, by notification, make rules for carrying out the purposes of this Act.

Power to make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the salary and allowances payable to and the other conditions of service of the members under sub-section (6) of section 5;

(b) the powers and functions of the Chairperson under sub-section (1) of section 6;

(c) the category of books of account or other documents which are required to be maintained under sub-section (3) of section 12;

(d) the period within which an application is to be made under sub-section (1) of section 15;

(e) the manner in which the accounts of the Authority shall be maintained under sub-section (1) of section 23;

(f) the time within which and the form and manner in which returns and report are to be made to the Central Government under sub-sections (1) and (2) of section 24;

(g) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, by rules.

35. (1) The Authority may, with the previous approval of the Central Government, by notification, make regulations consistent with this Act and the rules made thereunder to carry out the purposes of this Act.

Power to make regulations.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

(a) the times and places of meetings of the Authority and the procedure to be followed at such meetings under sub-section (1) of section 8, including quorum necessary for the transaction of business;

(b) the transaction of business at the meetings of the Authority under sub-section (4) of section 8;

(c) the salaries and allowances payable to and the other conditions of service of officers and other employees of the Authority under sub-section (2) of section 10;

(d) levy of fees under clause (i) of sub-section (1) of section 11.

Rules and regulations to be laid before Parliament.

36. Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

Application of certain laws.

37. The provisions of this Act shall be in addition to the provisions of the Indian Telegraph Act, 1885 and the Wireless Telegraphy Act, 1933 and, in particular, nothing in this Act shall affect any jurisdiction, powers and functions required to be exercised or performed by the Telegraph Authority in relation to any area falling within the jurisdiction of such Authority.

13 of 1885.
17 of 1933.

Power to remove difficulties.

38. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty:

Provided that no order shall be made under this section after the expiry of two years from the date of commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

Repeal and saving.

39. (1) The Telecom Regulatory Authority of India Ordinance, 1996 is hereby repealed.

Ord. 10 of 1996.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of this Act.

STATEMENT OF OBJECTS AND REASONS

In the context of the National Telecom Policy, 1994, which amongst other things, stresses on achieving the universal service, bringing the quality of telecom services to world standards, provisions of wide range of services to meet the customers' demand at reasonable price, and participation of the companies registered in India in the area of basic as well as value added telecom services as also making arrangements for protection and promotion of consumer interest and ensuring fair competition, there is a felt need to separate regulatory functions from service providing functions which will be in keeping with the general trend in the world. In the multi-operator situation arising out of opening of basic as well as value added services in which private operator will be competing with Government operators, there is a pressing need for an independent telecom regulatory body for regulation of telecom services for orderly and healthy growth of telecommunication infrastructure apart from protection of consumer interest.

2. In view of above, it was proposed to set up an independent Telecom Regulatory Authority as a non-statutory body and for that purpose the Indian Telegraph (Amendment) Bill, 95 was introduced and then passed by Lok Sabha on 6th August, 1995. At the time of consideration of the aforesaid Bill in Rajya Sabha, having regard to the sentiments expressed by the Members of Rajya Sabha and of the views of the Standing Committee on Communication which expressed a hope that steps will be taken to set up a Statutory Authority, it is proposed to set up the Telecom Regulatory Authority of India as a statutory authority.

3. The proposed Authority will consist of a Chairperson and minimum two and maximum four members. A person who is or has been a Judge of the Supreme Court or Chief Justice of a High Court will be eligible to be appointed as a Chairperson of the authority. A member shall be a person who has held the post of Secretary or Additional Secretary to the Government of India or any equivalent post in the Central Government or the State Government for a minimum period of three years.

4. The powers and functions of the Authority, *inter-alia*, are—

- (i) ensuring technical compatibility and effective inter-relationship between different service providers;
- (ii) regulation of arrangement amongst service providers of sharing their revenue derived from providing telecommunication services;
- (iii) ensuring compliance of licence conditions by all service providers;
- (iv) protection of the interest of the consumers of telecommunication service;
- (v) settlement of disputes between service providers;
- (vi) fixation of rates for providing telecommunication service within India and outside India.
- (vii) ensuring effective compliance of universal service obligations.

5. The Authority shall have an inbuilt dispute settlement mechanism including procedure to be followed in this regard as well as a scheme of punishment in the event of non-compliance of its order.

6. The Authority will have to maintain transparency while exercising its powers and functions. The powers and functions would enable the Authority to perform a role of watch dog for the telecom sector in an effective manner.

7. In order that the Authority functions in a truly independent manner and discharges its assigned responsibilities effectively, it is proposed to vest the Authority with a statutory status.

8. As the Parliament was not in session, the President promulgated the Telecom Regulatory Authority of India Ordinance, 1996 on the 27th January, 1996 for the aforesaid purpose.

9. The Bill seeks to replace the said Ordinance.

New Delhi;
The 14th February, 1996.

SUKH RAM.

**PRESIDENT'S RECOMMENDATION UNDER ARTICLES 117 AND 274 OF THE
CONSTITUTION OF INDIA**

[Copy of letter No. 1-194-TCO (Vol. VII), dated 19 February, 1996 from Shri Sukh Ram, Minister of State of the Ministry of Communications to the Secretary-General, Lok Sabha.]

The President, having been informed of the subject matter of the Telecom Regulatory Authority of India Bill, 1996 recommends the introduction and consideration of the Bill in the House under articles 117(1), 117(3) and 274(1) of the Constitution.

Notes on clauses

Clause 2 defines the various expressions occurring in the Bill.

Clause 3 provides for the establishment of the Telecom Regulatory Authority of India by the Central Government. The Authority shall consist of a Chairperson and minimum two members and maximum four members which shall be appointed by the Central Government. The head office of the Authority shall be at New Delhi.

Clause 4 makes provisions regarding the qualifications to be fulfilled for appointment as Chairperson and members of the Authority.

Clause 5 contains provisions regarding the terms of office, conditions of service, etc., of Chairperson and other members of the Authority. This clause, *inter alia*, provides that the Chairperson shall hold office for a term of five years from the date on which he enters upon his office and the member shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of sixty-two years, whichever is earlier. This clause states that the Chairperson or the members ceasing to hold office in the Authority shall be ineligible for further employment under the Central Government, State Government and in any private company in Telecom sector in relation to which any matter has been the subject-matter of consideration before the Authority.

Clause 6 contains provisions regarding powers of the Chairperson and Vice-Chairperson. This clause further provides that the Central Government may appoint one of the members to act as the Vice-Chairperson of the Authority.

Clause 7 contains provisions for removal of members from office in certain circumstances.

Clause 8 contains detailed provisions regarding conduct of the meetings of the Authority.

Clause 9 provides that no act or proceeding of the Authority shall be invalid by reasons of any vacancy in, or any defect in the constitution of, the Authority or any defect in the appointment of a person acting as a member of the Authority.

Clause 10 makes provisions for appointment of officers and other employees in the Authority and for determination of the salaries and allowances and the other terms and conditions of service of such officers and employees.

Clause 11 lays down the powers and functions of the Authority. The functions of the Authority, *inter alia*, shall be to—

(a) ensure technical compatibility and effective inter-relationship between different service providers;

(b) regulate arrangement of sharing revenue derived from providing telecommunication services;

(c) ensure compliance of licence conditions by all service providers;

(d) lay down and ensure the time period for providing local and long distance circuits of telecommunication between different service providers;

(e) facilitate competition and promote efficiency in the operation of telecommunication services so as to facilitate growth in such services;

(f) protect the interest of the consumers of telecommunication service;

(g) settle disputes between service providers;

(h) fix rates for providing telecommunication service within India and outside India including the rates at which messages shall be transmitted to any country outside India;

(i) render advice to the Central Government in the matters relating to the development of telecommunication technology and any other matter relating to telecommunication industry in general;

(j) levy fees at such rates and in respect of such services as may be determined by regulations;

(k) ensure effective compliance of universal service obligations;

(l) perform such other functions including such administrative and financial functions as may be entrusted to it by the Government or as may be necessary to carry out the provisions of this Bill.

The Authority shall ensure transparency while exercising its powers and discharging its functions. This clause further states that the Authority shall not act against the interest of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order or decency or morality.

Clause 12, inter alia, seeks to empower the Authority to call information from any service provider, conduct enquiry in relation to the affairs of any service provider and direct any of its officers or employees to inspect the books of account or other documents of any service provider and to issue such directions to service provider as it may consider necessary, for proper functioning by service providers.

Clause 13 seeks to empower the Authority to issue directions from time to time to the service provider for discharging of its functions.

Clause 14 makes detailed provisions for settlement of disputes among service providers or between service providers and a group of consumers. This clause, inter alia, provides that such disputes shall be adjudicated by a bench consisting of two members constituted by the Chairperson. The provisions of this clause shall not be applied in respect of matters related to (a) monopolistic trade practice, restrictive trade practice and unfair trade practice which are subject-matter of the Monopolies and Restrictive Trade Practices Commission, (b) complaint of an individual consumer maintainable before a consumer disputes redressal forum or a Consumer Disputes Redressal Commission or National Consumer Redressal Commission, and (c) disputes between Telegraph Authority and any other person referred to in sub-section (1) of section 7B of the Indian Telegraph Act, 1885.

Clause 15 contains detailed provisions for filing of application by any aggrieved person for settlement of disputes by the Authority and procedure for passing order thereon by the Authority.

Clause 16 contains the procedure and powers of the Authority for the purpose of discharging its functions for settlement of disputes under Chapter IV of the Bill.

Clause 17 provides for right to legal representation by an applicant before the Authority.

Clause 18 contains provisions for filing an appeal to the High Court by any person aggrieved by any decision or order of the Authority.

Clause 19 states that every order passed by the Authority and the High Court shall be executable in the same manner as a decree of the Civil Court.

Clause 20 seeks to provide for penalty for wilful failure to comply with the orders of the Authority or the High Court.

Clause 21 contains provisions for grants of such sum of money as the Central Government may, after due appropriation made by Parliament by law in this behalf, make to the Authority to be utilised for the purposes of this Bill.

Clause 22 provides for constitution of the Telecom Regulatory of India General Fund. It further provides for grants, fees and charges to be credited thereto and all payments should be made therefrom.

Clause 23 provides for usual provisions regarding maintenance of proper accounts and other relevant records by the Authority as may be prescribed by the Central Government. The accounts of the Authority should be audited and certified by the Comptroller and Auditor-General of India which would be laid before Parliament by the Central Government.

Clause 24 provides for furnishing of returns, statements and annual report by the Authority to the Central Government. A copy of the annual report shall be laid, as soon as may be after it is received, before each House of Parliament.

Clause 25 confers powers on the Central Government to issue directions to the Authority.

Clause 26 specifies that member, officers and other employees of the Authority shall be deemed to be public servants.

Clause 27 specifies that no civil court shall have jurisdiction in respect of any matter which the Authority is empowered by or under this Bill to determine.

Clause 28 provides for usual provisions relating to the protection of action taken in good faith.

Clause 29 provides for penalty in contravention of the directions of the Authority.

Clause 30 provides that any offence committed by a company and punishable under the Bill would cover the person incharge of the company.

Clause 31 provides the Authority with exemption from tax on wealth and income.

Clause 32 provides for delegation of certain powers of the Authority.

Clause 33 lays down that a court should take cognizance of offences punishable under the provisions of the Bill or any rules and regulations made thereunder on a complaint made by the Authority. This clause further states that no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under the Bill.

Clause 34 confers on the Central Government the power to make rules for carrying out the provisions of the Bill.

Clause 35 empowers the Authority to make regulations with the previous approval of the Central Government consistent with the Bill.

Clause 36 lays down that the rules and regulations made under the Bill would be laid before Parliament.

Clause 37 provides that the provisions of the Bill are in addition to the provisions of the Indian Telegraph Act, 1885 and the Wireless Telegraphy Act, 1933 and nothing in the Bill shall affect any jurisdiction, powers and functions required to be exercised or performed by the Telegraph Authority in relation to any area falling within the jurisdiction of the Authority.

Clause 38 seeks to empower the Central Government to remove difficulties which may arise in giving effect to the provisions of the Bill.

Clause 39 seeks to repeal the Telecom Regulatory Authority of India Ordinance, 1996 and save actions taken thereunder as if taken under the corresponding provisions of the Bill.

FINANCIAL MEMORANDUM

As envisaged in the Telecom Regulatory Authority of India Bill, 1995, the Central Government proposes to set up an independent statutory Telecom Regulatory Authority under clause 3. Recurring expenditure towards pay and allowances, etc., the Chairperson under sub-clause (5) and members under sub-clause (6) of clause 5 and of the officers and other employees under clause 10 is estimated approximately at Rs. 47 lakhs per annum. Rough estimation of non-recurring expenditure on items such as furniture, office equipment, vehicle, etc., would be approximately of the order of Rs. 75 lakhs.
